Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
MARITIME COMMUNICATIONS/	)	
LAND MOBILE, LLC	)	
	)	
Application for Consent to Assignment to	)	File No. 0004604962
EnCana Oil & Gas (USA), Inc.	)	

To: Marlene K. Dortch, Secretary
Attention: Chief, Wireless Telecommunications Bureau

MOTION TO STRIKE

Maritime Communications/Land Mobile, LLC (MCLM), by its attorney, files its Motion to Strike the Reply to Opposition to Petition (Havens' Reply), filed in the above-captioned matter by Warren Havens, Environmentel LLC, Verde Systems LLC, Intelligent Transportation and Monitoring Wireless LLC (ITL), Telesaurus Holdings GB LLC, VG2 LLC, and Skybridge Spectrum Foundation (collectively, "Havens") against MCLM's application for consent to assignment of spectrum to EnCana Oil & Gas (USA), Inc. In support of its Motion, MCLM shows the following.

Havens Inserted Scandalous Material into his Reply

Presenting no basis, whatsoever, Havens repeatedly slandered MCLM by alleging that MCLM engaged in criminal actions. Havens Reply at 2, 3, 5, and Havens' Exhibit B at its page 12. Havens slandered MCLM by alleging at his page 9 that the OSC "has stated that MCLM unlawfully competed" against Havens in Auction No. 61. Havens slandered undersigned counsel

by alleging at his page 1, with absolutely no basis, that counsel had a history of asserting that the Commission was "a liar." Havens demonstrated no necessity for making any of his scandalous allegations.

Section 1.52 of the Commission's Rules provides that "an attorney may be subjected to appropriate disciplinary action, pursuant to §1.24, . . . if scandalous or indecent matter is inserted" in a filing with the Commission, 47 C.F.R. §1.52. Havens acted as his own attorney and attorney-in-fact for his limited liability affiliates in the preparation and filing of his Reply.

Havens repeatedly accused MCLM of felonious acts in violation of Federal criminal law. The United States Criminal Code provides that

> whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully -
>
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined under this title or imprisoned not more than 5 years, or both,

18 U.S.C. §1001. At his Exhibit B, Havens expressly accused MCLM of fraud.

A diligent Lexis search found no reported instance in which the Commission has applied the prohibition of scandalous matter set forth in Rule Section 1.52. Accordingly, one must turn to other sources to define "scandal per se".[1]

It has been held that "words injurious upon their face without the aid of extrinsic proof are defamatory per se, Sweeney v. Newspaper Printing Corp., 177 Tenn. 196, 147 S.W.2d 406; Hinson v. Pollock, 159 Tenn. 1, 3, 15 S.W.2d 737; Wilson v. Gadd, 4 Tenn.App. 582, 586; Mattson v. Albert, 97 Tenn. 232, 234, 36 S.W. 1090. Libels have been classified as (1) Libels which impute to a person the commission of a crime; (2) libels which have a tendency to injure him in his office, profession, calling, or trade; and (3) libels which hold him up to public scorn and ridicule, Hinson v. Pollock, 159 Tenn. at p. 3, 15 S.W.2d at p. 737. In Karrigan v. Valentine, the court said,

> Words libelous per se are words which are defamatory in themselves and which intrinsically, by their very use, without innuendo and the aid of extrinsic proof, import injury and damage to the person concerning whom they were written. They are words from which, by the consent of mankind generally, damage follows as a natural consequence and from which malice is implied and damage is conclusively presumed to result,

339 P.2d 52, 55.

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[1] It would appear that since Section 1.52 concerns only written filings with the Commission ("petitions, motions, pleadings, briefs, and other documents"), the word "libel" was intended, rather than "slander". Some courts achieve consistency by referring to both "oral slander" and "written slander", Venn v. Tennessean Newspapers, Inc., 201 F. Supp. 47, 58 (Middle Dist. Tenn. 1962).

Courts have recognized four categories of words as defamatory per se for which special, or pecuniary, damages are presumed: (1) words imputing the commission of a criminal offense; (2) words imputing infection with a communicable disease which, if true, would exclude one from society; (3) words imputing an inability to perform or want of integrity in the discharge of duties of office or employment; or (4) words prejudicing a particular person in his profession or trade. See, Kirk v. Hillcrest, 31 Ill. App. 3d 1063, 335 N.E.2d 535, 537 (Ill. App. Ct. 1975). It has been explained that "perhaps the clearest example of libel per se is an accusation of crime. The courts have manifested liberality, at the pleading stage, in finding libel per se," Snider v. National Audubon Soc., 1992 U.S. Dist. Lexis 10017 (E. Dist. CA 1992).

The Commission Should Impose Protective Sanctions

The Commission and the courts have a long history of protecting themselves against the filing of abusive pleadings. The Commission and other agencies of the federal government were once confronted by a person who "filed more than 250 civil actions, appeals, and other matters in little more than a decade," In re Anthony R. Martin-Trigona, 573 F. Supp. 1245, 1262 (1983). Therein, the court handed down an injunction which prohibited Martin-Trigona from filing any federal court lawsuit arising out of the conduct of persons involved in a certain proceeding and prohibited him from filing in any federal court any new action without first obtaining leave of the court.

In Alexander Broadcasting Co., 13 FCC Rcd. 10355 (1998), the Mass Media Bureau imposed on Vincent L. Hoffart, Sr. a requirement that

> any future motion, pleading, or other document submitted by Hoffart to the Commission or to any member of the staff shall have a cover page attached to it clearly labeled "Request for Permission to File." The request shall include the following statement: "Pursuant to previous findings by the FCC that Vincent L. Hoffart, Sr., has abused Commission processes, and requiring Hoffart to request permission of the Mass Media Bureau to file further documents, Hoffart submits this request." The Mass Media Bureau, in considering these requests, will be guided by . . . whether Hoffart has established that the filings concern legitimate substantive public interest matters relevant to the application proceedings in which they are filed. We will deny permission to file abusive documents such as those that are primarily frivolous, repetitive, irrelevant, obstructive, or that appear designed to cause harm in furtherance of a private interest. Failure to request permission to file will be deemed good and sufficient grounds for the Bureau to summarily deny Hoffart's document,

id. at 10356.

It is well settled that a government agency may place restrictions on participation to prevent abuse of its processes, Radio Carrollton, et al., 69 FCC 2d 1138, 1148-55 (1978). The Commission need not allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests, United Church of Christ v. FCC, 359 F.2d 994, 1005 (1966). The Commission has authorized its Bureaus to impose sanctions upon participants whose primary purpose is to abuse its processes, see, Public Notice, Commission Taking Tough Measures Against Frivolous Pleadings, 11 FCC Rcd 3030 (1996).

Beginning in 1968 and continuing for more than 15 years, the Commission was presented with controversies involving James M. Carpenter and Miriam G. Carpenter d/b/a Carpenter Radio Company. In Central Mobile Radio Phone Service, Inc., 1986 FCC Lexis 3886 (FCC Mimeo 86-88 1986), the Commission stated that had repeatedly found the Carpenters' allegations to be without merit and that the filing of their pleadings had been an abuse of process. The Commission

held that "in the event Carpenter files further pleadings of this nature, the staff is directed to deny them summarily and to initiate proceedings to address whether Carpenter has filed strike pleadings or otherwise so abused the Commission's processes as to justify revocation," *id.* at 2-3. In 1987, a Federal District Court awarded libel damages against James Carpenter and Carpenter Radio Company for statements they had made in the course of a proceeding before the Commission, see, Lothschuetz v. Carpenter Radio Co., 898 F.2d 1200 (1990).

Havens so abused the Commission's processes with excessive pleadings that the Commission ordered the Wireless Telecommunications Bureau to summarily dismiss any further filing in the matter, Warren C. Havens, 25 FCC Rcd. 511 (2010). Havens did file another pleading which the Bureau summarily dismissed, Warren C. Havens, 25 FCC Rcd 2123 (WTB 2010). The Commission should take effective action and impose sanctions which will be effective in causing Havens to cease harrasing his competitors and the Commission. Bringing Havens to respect the Commission's processes is especially important at this time because he is a party to the OSC proceeding and is not represented by legal counsel. Such undisciplined behavior in the forthcoming hearing as Havens showed in his Reply could make it extremely difficult for the cause of justice to be served.

Section 1.24 of the Commission's Rules provides, in relevant part, that

(a) The Commission may censure, suspend, or disbar any person who has practiced, is practicing or holding himself out as entitled to practice before it if it finds that such person:

(3) Is lacking in character or professional integrity; and/or

(4) Displays toward the Commission or any of its hearing officers conduct which, if displayed toward any court of the United States or any of its Territories or the District of Columbia, would be cause for censure, suspension, or disbarment,

47 C.F.R. §1.24.

Havens abused the Commission's processes by larding his Reply with claims and arguments which were in no way replies to anything stated in MCLM's Opposition. MCLM's Opposition made no reference whatsoever to the Order to Show Cause (OSC) why MCLM's licenses should not be revoked. Nevertheless, Havens spent pages misrepresenting the OSC as a finding of fact rather than an order for an administrative law judge to determine facts. Havens recklessly smeared EnCana by suggesting, with no evidence whatsoever, that EnCana had failed to provide relevant information to the Commission.

Havens' Reply Was Defective on its Face

Havens' Reply was 11 pages long. For such a pleading, Sections 1.49(b)&(c) of the Commission's Rules require the inclusion of a table of contents and summary of the filing.[2]

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[2] Rule Sections 1.49(b)&(c) provide that

(b) Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which as computed under this chapter exceeds ten pages, shall include, as part of the pleading or document, a table of contents with page references.

(c) Except as provided in paragraph (d) of this section, all pleadings and documents filed with the Commission, the length of which filings as computed under this chapter exceeds ten pages, shall include, as part of the pleading or document, a summary of the filing, suitably paragraphed,

47 C.F.R. §1.49(b)&(c).

Havens' Reply contained neither. Havens' disregard of the requirements of Rule Sections 1.49(b)&(c) has become habitual. The Commission should help break Havens of the habit by striking his Reply.

Conclusion

For all the foregoing reasons, the Commission should strike Havens' Reply and impose such sanctions as may be necessary to cause Havens from abusing the Commission's processes in the future.

Respectfully submitted,
MARITIME COMMUNICATIONS/
LAND MOBILE, LLC

/s/ Dennis C. Brown
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Dated: June 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this sixth day of June, 2011, I served a copy of the foregoing on each of the following persons by placing a copy in the United States Mail, first-class postage prepaid:

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